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MICHAEL RODAK

IN THE

Supreme Court of the United States

October Term, 1971.

No. 71-5855.

RUSSELL D. MEALEY, JR.,

Petitioner,

v.

THE STATE OF DELAWARE,

Respondent.

BRIEF IN OPPOSITION TO A PETITION FOR A WRIT OF CERTORARI TO THE SUPREME COURT OF THE STATE OF DELAWARE.

W. LAIRD STABLER, JR.,
Attorney General of the State of Delaware,
Department of Justice, Room 230,
Public Building,
Wilmington, Delaware. 19801

JEROME O. HERLIHY,
Chief Deputy Attorney General,
Department of Justice, Room 230,
Public Building,
Wilmington, Delaware. 19801

JAMES A. ERISMAN,
Deputy Attorney General,
Department of Justice, Room 230,
Public Building,
Wilmington, Delaware. 19801

Attorneys for the Respondent.

International, 711 So. 50th St., Phila., Pa. 19143—Tel. SA 7-8711 Area Code 215

STATEMENT OF CASE.

Russell D. Mealey, Jr., also known as Junior Martin, was convicted of breaking and entering, and rape without a recommendation of mercy. In accordance with the jury's verdict, he received a mandatory life sentence. The convictions were affirmed by the Supreme Court of Delaware.

At approximately 3:00 A. M., on her seventy-sixth birthday, the victim was brutally beaten and raped in her own home (T-7, 8, 9).[1] The police were called to investigate and collected an extraordinary amount of evidence incriminating the Petitioner. Warrants were obtained and, within six hours after the commission of the rape, the Petitioner was arrested hiding in his bedroom closet under a pile of clothes (T-60). Following his arrest, the Petitioner made a series of incriminating statements, although he denied the rape (T-106, 107, 108, 109).

At the trial the elderly, nearsighted victim, confused and afraid of Mealey, was unable to identify her assailant (T-10, 11). However, she later identified his picture from a series of six photographs she examined before the jury (T-28). The Delaware Supreme Court ruled this method of identification improper but harmless beyond a reasonable doubt in light of the otherwise overwhelming evidence of guilt.

Particular relevant facts will be set forth in the argument portion of the brief as applicable.

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1. T-Trial Transcript.

REASONS FOR DENYING WRIT.

The reasons given by the Petitioner for the issuance of a Writ of Ceriorari and reversal of the opinion of the Delaware Supreme Court and judgment of the Delaware Superior Court jury are wholly lacking in substance. The decision below turns upon its own facts and affects no one but the parties involved. The Petitioner's first point of argument concerning harmless error is limited solely to this case and the particular evidence of record. Regarding the second point, the Petitioner's arrest was lawful without regard for the question sought to be raised by the petition; this Court would be unlikely ever to reach the point of alleged importance. Finally, the voluntariness of the incriminating statements rests solely on the particular facts admitted in evidence. The Petitioner's claims, seeking to further prolong this case, lack sufficient merit to convert the controversy into one warranting review by this Court.

I.

Accepting the Delaware Supreme Court's ruling[2] that the in-court photographic identification of the Petitioner was improper the error was harmless beyond a reasonable doubt. *Chapman v. California*, 386 U. S. 18, 87 S. Ct. 824, 17 L. Ed. 2d 705 (1967). The error was merely cumulative because of the other overwhelming evidence establishing the Petitioner as the perpetrator of the crime.

The man who attacked the victim appeared to be white and was wearing a white shirt and dark pants, and was carrying a portable radio (T-9, 32, 47). Shortly before the attack and near the victim's house, Mealey was seen wearing a white shirt, dark pants and carrying a portable radio (T-187, 190). After the time of the attack and near

2. The opinion of the Supreme Court of Delaware is currently unreported.

the victim's residence, he was seen again, wearing a white "T" shirt, dark pants and carrying a portable radio. At this time, however, he had blood on his shirt (T-41).

A white shirt, a pocket watch stopped at 3:18, a pair of shoes and an English shilling were found at the scene of the crime outside a bathroom window, which had been broken into by the assailant (T-42, 49, 52). Four cigarette lighters and two magistrate warrants in the name of Russell Mealey were found inside the house, next to the blood-stained mattress where the victim was raped (T-47, 48).

The Petitioner was arrested hiding in a bedroom closet under a pile of clothing (T-60). At the time of his arrest, within six hours after the commission of the offense, the Petitioner was wearing underwear apparently stained with blood (T-111). Three or four long gray hairs similar to the victim's were clinging to his black trousers (T-111). A cigarette lighter was taken from his pocket (T-101).

The Petitioner admitted that, shortly before the attack occurred, he broke into a delicatessen within three blocks of the victim's residence and took eight cigarette lighters and two pocket watches, matching the ones found at the scene and on his person (T-110, 111). He stated the English shilling was his and that he had it with him on the night of the crime (T-110).

The picture of the Petitioner identified by the victim, as well as those to which she compared it, was admitted in evidence. This identification followed the failure of this confused, seventy-six year old woman to identify the Petitioner earlier in open court (T-148, 155). The jury had it all before them.

In light of all the evidence before the jury, there is no reasonable possibility that the improper identification could have changed the result of the trial. Even excluding the

identification, the otherwise overwhelming evidence compelled the jury to reach one conclusion—Russell Mealey committed the rape. Clearly the error was harmless beyond a reasonable doubt.

II.

Petitioner seeks to reverse the judgment of the Delaware Supreme Court by claiming his arrest was unlawful under *Giordenello v. United States*, 357 U. S. 480, 78 S. Ct. 1245, 2 L. Ed. 2d 1503, because the warrant lacked sufficient probable cause to justify its issuance. *Giordenello* is inapplicable here because the warrant was sworn out by an investigating police officer who had personal knowledge of the evidence linking the Petitioner to the crime (T-53, 59). The warrant questioned here does not merely state that the Petitioner committed a crime, but sets forth a series of specific facts regarding the circumstances of the crime.

Even assuming the warrant is insufficient to justify a neutral and detached magistrate to conclude there is probable cause for its issuance, the arrest was lawful. The Petitioner was arrested approximately two hours after the offense had been reported. The arrest was made by two officers who investigated the crime scene, interviewed the victim, and had personal knowledge of the evidence incriminating the Petitioner (T-46, 47, 58). Upon arrival at the Petitioner's house, they saw him in the living room window (T-59). He was subsequently found hiding in a bedroom closet under a pile of clothing (T-60).

11 *Del. C.* § 1906(b) provides authority for an arrest without a warrant when there is reasonable ground to believe that the person to be arrested has committed a felony. The Petitioner was the only person the arresting officers could have reasonably suspected as the perpetrator of the

crimes. The arrest was lawful. *Wilson v. State,* 10 Terry 37, 109 A. 2d 381 (Del. Supr. 1954); cert. den. 348 U. S. 983, 75 S. Ct. 574, 99 L. Ed. 765.

III.

The Petitioner's self-incriminating statements were not in violation of his rights under *Miranda v. Arizona,* 384 U. S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966). The Petitioner was advised of his rights at the moment of arrest (T-102). Approximately thirty minutes later, his rights were explained to him for the second time. A written form, indicating his willingness to make a statement, was signed by the Petitioner, and he indicated an understanding of each of his rights by a series of printed yeses (T-106, 107, 108, 109).

At the time he gave the statement, the Petitioner was sober, nonchalant and indifferent (T-112, 123). At his trial, approximately ten months after the commission of the offense, the Petitioner admitted his rights had been explained to him; although he did not remember what they were (T-87). The statement was clearly voluntary and properly admitted into evidence.

CONCLUSION.

For the foregoing reasons, we respectfully submit that this petition for a Writ of Certiorari should be denied.

Respectfully submitted,

W. LAIRD STABLER, JR.,
Attorney General of the State of Delaware,
Department of Justice, Room 230,
Public Building,
Wilmington, Delaware 19801

JEROME O. HERLIHY,
Chief Deputy Attorney General,
Department of Justice, Room 230,
Public Building,
Wilmington, Delaware 19801

JAMES A. ERISMAN,
Deputy Attorney General,
Department of Justice, Room 230,
Public Building,
Wilmington, Delaware 19801
Attorneys for the Respondent.